

Court of Appeals, State of Michigan

ORDER

People of MI v Anthony Kenyon Traylor

Docket No. 287082

LC No. 07-028572 FH
07-028573 FH

Alton T. Davis
Presiding Judge

Peter D. O'Connell

Bill Schuette
Judges

On the Court's own motion, the Clerk's Office is directed to docket defendant's delayed application for leave to appeal filed on August 13, 2008, as having been timely filed within the deadline set forth in MCR 7.205(F). *People v Means*, 480 Mich 989 (2007), *People v McCoy*, 480 Mich 989 (2007), *People v Rodgers*, 480 Mich 989 (2007), and *People v Kipfer*, 480 Mich 990 (2007).

Defendant's appellate attorney failed to understand that, under the court rules, the period for filing this application for leave to appeal started with entry of the judgment of sentence on August 3, 2007, and the application had to be filed no later than August 3, 2008. See MCR 7.205(F)(3). The order denying the postjudgment motion could only be used to determine when to file the application for leave to appeal if that motion was filed within six months after entry of the judgment of sentence and that decision on the motion did not occur until about 12 months after entry of the judgment of sentence. In that situation defendant has 21 days after entry of the order denying the motion to file the application for leave to appeal. See MCR 7.205(F)(4). In this case 21 days after April 22, 2008 would not have given appellant additional time to file the application for leave to appeal.

Accordingly, defendant was deprived of a direct appeal of his conviction and judgment of sentence as a result of constitutionally ineffective assistance of appellate counsel. Costs are imposed against appellate counsel Frederick A Neumark P-33758, only, in the amount of \$250, to be paid to the Clerk of this Court within 21 days of the Clerk's certification of the order.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 16 2008

Date

Sandra Schultz Mengel
Chief Clerk